



Agenda Date: 4/26/00
Agenda Item: IV-A

STATE OF NEW JERSEY
Board of Public Utilities
Two Gateway Center
Newark, NJ 07102

CABLE TELEVISION

IN THE MATTER OF THE PETITION OF)	<u>RENEWAL</u>
CABLEVISION OF OAKLAND, INC. FOR A)	<u>CERTIFICATE OF APPROVAL</u>
RENEWAL OF A CERTIFICATE OF)	
APPROVAL TO OPERATE AND MAINTAIN)	
A CABLE TELEVISION SYSTEM IN THE)	
BOROUGH OF PARAMUS, COUNTY OF)	
BERGEN, STATE OF NEW JERSEY)	DOCKET NO. CE98121414

Schenck, Price, Smith and King, Morristown, New Jersey, by Sidney Sayovitz, Esq., for the Petitioner.

Borough Clerk, Borough of Paramus, New Jersey, by Ian I. Shore, for the Borough.

BY THE BOARD:

On September 28, 1978, the Board granted Micro-Cable Communications Corp. d/b/a UA-Columbia Cablevision of New Jersey ("UA-Columbia") a Certificate of Approval in Docket No. 776C-6294, for the construction, operation and maintenance of a cable television system for the Borough of Paramus ("Borough"). On December 28, 1988, the Board granted UA-Columbia a Renewal Certificate of Approval for the Borough in Docket No. CE88080928. Subsequently, UA-Columbia underwent internal restructuring and was doing business as United Artists Cable of New Jersey ("United Artists").

In Docket No. CO92080822, United Artists informed the Board that it would do business as TCI of Northern New Jersey ("TCINNJ"). On November 16, 1992, the Board approved the petition and recognized the name change. TCINNJ underwent further restructuring and informed the Board that it would no longer use the name Micro-Cable Communications Corp. and would now use the corporate name of TCI of Northern New Jersey, Inc ("TCINNJ, Inc."). The Board approved the transfer of the Certificate of Approval for the Borough from TCINNJ, Inc. to Cablevision of Oakland, Inc. ("Petitioner"), in Docket No. CF97090674, on December 17, 1997. Although the Petitioner's Certificate expired on September 28, 1999, the Petitioner is authorized to continue to provide cable service to the Borough pursuant to N.J.S.A. 48:5A-25.

The Petitioner filed an application for the renewal of its municipal consent with the Borough on June 8, 1998, pursuant to N.J.S.A. 48:5A-23 and N.J.A.C. 14:18-13. The Borough, after public hearing, adopted a municipal ordinance granting renewal consent to the Petitioner on December 15, 1998. On December 16, 1998, the Petitioner formally accepted the terms and conditions of the ordinance, in accordance with N.J.S.A. 48:5A-24.

On December 16, 1998, pursuant to N.J.S.A. 48:5A-16, the Petitioner filed with the Board for a renewal of its Certificate of Approval for the Borough. On December 16, 1998, the Board approved the transfer of the Certificate of Approval for the Borough from Cablevision to US Cable of Paramus-Hillsdale, LLC ("US Cable"). US Cable is required to honor all written commitments made to the Borough by the Petitioner, including those contained herein, in the municipal consent ordinance and in the municipal consent application, except as modified herein.

The Board has reviewed the application for municipal consent, the petition for a Renewal Certificate of Approval and the municipal consent ordinance. Based upon this review and the recommendation of the Office of Cable Television, the Board HEREBY FINDS the following:

1. The Petitioner possesses the requisite legal, character, financial and technical qualifications for the awarding of a Renewal Certificate of Approval. Further, the Borough reviewed these qualifications in conjunction with the municipal consent process. See N.J.S.A. 48:5A-22 to 29 and N.J.A.C. 14:18-13.
2. The design and technical specifications of the system will ensure that the Petitioner provides safe, adequate and proper service.
3. The Petitioner has represented that all previously required construction within the franchise territory is complete.
4. The franchise period as stated in the ordinance is ten years from the date of issuance of this Certificate. The Office of Cable Television finds this period to be of reasonable duration.
5. The Petitioner's rates shall be regulated and tariffs shall be filed for all services, in accordance with the rules and regulations of the Federal Communications Commission, the Board and the Office of Cable Television. The Petitioner shall maintain informational tariffs for unregulated service rates and promptly file any revisions thereto.
6. Pursuant to N.J.S.A. 48:5A-26(a), the ordinance specifies a complaint officer. In this case it is the Borough Clerk. All complaints shall be received and processed in accordance with N.J.A.C. 14:17-6.5.
7. The Petitioner shall maintain a local business office for the purpose of receiving, investigating and resolving complaints.

8. The franchise fee to be paid to the Borough is specified to be 2% of the Petitioner's gross revenues from all recurring charges in the nature of subscription fees paid by subscribers for its cable television reception service in the Borough. Additional regulatory fees shall be paid to the State in an amount not to exceed 2% of Petitioner's gross operating revenues derived from intrastate operations. The Board finds these fees to be reasonable.
9. The Petitioner has committed to install cable in all residences in the Borough at tariffed rates for standard and non-standard installation. Commercial establishments will be constructed in accordance with the Petitioner's commercial line extension policy attached to this Certificate as Appendix "I".
10. The Petitioner has agreed to provide public, educational and governmental ("PEG") access channels and facilities in accordance with its renewal application. Specifically, the Petitioner shall provide one PEG access channel, which is shared by the Borough with the Borough of Hillsdale as well as studio facilities. The Petitioner shall provide a second PEG access channel when the first PEG access channel reaches the program level as stated in the ordinance.
11. The Petitioner shall provide residents of the Borough with a 13-week training course to provide practical and technical expertise on how to tape and broadcast Borough events. Upon completion of the training course, the Petitioner shall provide time on the access channels for broadcasting of meetings and events within the Borough. The Petitioner shall also provide the Borough with a modulator, VCR, TV monitor and camera upon completion of the training course. Said training and equipment shall be provided without cost to the Borough and without pass through to subscribers in the Borough.
12. The Petitioner shall provide the installation and basic monthly service, free of charge, to the Borough schools listed, the Borough public library, Bergen Community College, and all other public buildings in the Borough as required by the ordinance.
13. The Petitioner shall provide a performance bond of \$50,000.00 for the life of the franchise.

It is to be noted here that certain provisions of the ordinance adopted by the Borough need clarification and/or are in violation of the New Jersey State Cable Act, N.J.S.A. 48:5A-1 et seq. The Office of Cable Television provided review of the ordinance. However, the Borough declined to modify the ordinance. Therefore, this Certificate takes exception to the following provisions:

Section 7. FRANCHISE FEE. This provision of the ordinance states, in relevant part, that the company shall "pay to the Borough two (2%) of gross revenues from all cable television recurring charges, including but not limited to, basic cable service, as defined herein, received by the Company from subscribers to its cable television reception service in the Borough" [emphasis added]. It should be noted that, pursuant to New Jersey statute, N.J.S.A. 48:5A-30(a), the Petitioner is required to pay "2% of the gross revenues from all recurring charges in the nature of subscription fees paid by subscribers to its cable television reception service in such municipality." The Borough's ordinance appears to expand this definition. If the Borough had wished to receive a

higher franchise fee, it was instructed by the Office of Cable Television to indicate the specific amount or percentage to be received. If the ordinance was then accepted by the Petitioner, the Board would hold a separate proceeding for the provision for a higher franchise fee from the renewal and the Borough would be required to prove to the satisfaction of the Board that the fees above those provided in N.J.S.A. 48:5A-30(a) are "warranted by the expenses to the municipality with respect to the regulation or supervision within its territory, or any other expenses caused by the existence and operation within its territory of cable television," pursuant to N.J.S.A. 48:5A-30(c). However, the Borough did not specify any additional franchise fees to be paid. Therefore, this Certificate clarifies that the Petitioner shall pay franchise fees pursuant to N.J.S.A. 48:5A-30(a).

Section 9. CONSTRUCTION REQUIREMENTS B. This section states that the Petitioner may not perform the work outlined without "prior approval of the Board". It is not necessary for the Petitioner to obtain approval from the Board in these situations. Therefore, the clause "prior approval of the Board" is not applicable and is stricken.

Section 10. COMMITMENTS BY CABLEVISION OF OAKLAND, INC. (B) Customer Service 8. This provision states that the Petitioner will answer telephone calls in a certain manner and dictates technical standards upon the company. The Office of Cable Television is responsible for enforcing technical standards on a cable television operator, and as a result, the Borough is preempted from including this provision. Therefore, this Certificate amends the ordinance accordingly.

Section 10. COMMITMENTS BY CABLEVISION OF OAKLAND, INC. (B) Customer Service 11. This section states that the company will provide parental key lock devices to subscribers who request and pay for such devices. Every cable television company is required to provide parental locks pursuant to state and federal law. However, neither the Borough nor the Office of Cable Television may specify the type of device to be provided. Therefore, this provision is modified to provide that the Petitioner shall provide parental locks but not specify the type of device required.

Section 10. COMMITMENTS BY CABLEVISION OF OAKLAND, INC. (B) Customer Service 13. This provision defines service interruptions as loss of picture or sound on one or more cable channel and then mandates repair procedures. N.J.A.C. 14:18-3.13 provides how a cable television company must repair an outage or service interruption. The Office of Cable Television, through the New Jersey Administrative Code, is responsible for enforcing technical standards on a cable television company, and therefore the Borough may not broaden the requirements of the New Jersey Administrative Code. This Certificate strikes that provision of the ordinance.

Section 12. PERFORMANCE BOND AND OTHER INSURANCES This section states, in relevant part, that the Petitioner shall file with the Borough a performance bond not less than \$50,000.00. The amount of the performance bond must be specified in the ordinance. In addition, pursuant to N.J.S.A. 48:5A-28(d), it is the Office of Cable Television's responsibility to review all proposals for performance bonds in excess of \$25,000.00.

The Board is satisfied that there is a need for an additional performance bond for the Borough. The system is new and construction of facilities is anticipated. In addition, the Petitioner has accepted the ordinance in its entirety. However, the Borough's ordinance was not specific as to the amount of the performance bond. Therefore, this Certificate amends the ordinance to provide that the Petitioner shall provide a performance bond of \$50,000.00 for the life of the franchise.

Section 15. ADDITIONAL FACILITIES AND SERVICES 6. This provision requires the Petitioner to waive its tariffed rates for downgrading services and is impermissible pursuant to N.J.S.A. 48:5A-39(d) which prohibits cable companies to "make or give, directly or indirectly, any undue preference or advantage to any person, locality or particular description of traffic..." The Petitioner may agree to such a provision, but it would be required to give this advantage to all subscribers regardless of where they live. The Petitioner's tariff indicates that it currently charges a fee of \$1.99 for downgrade of services. Therefore, this provision is stricken from the ordinance.

Section 20. FAILURE TO COMPLY This section states that if the Petitioner fails to comply with a material term of the ordinance, the Borough has the right to terminate the franchise. Authority rests solely with the Board, pursuant to N.J.S.A. 48:5A-51(b), to determine if any violation has occurred and to enforce penalties by way of summary proceedings in the appropriate court of law. Therefore, this Certificate modifies this provision to state that the Borough may submit any alleged violations to the Board for determination, and may also submit a recommendation for action.

Based upon these findings, the Board HEREBY CONCLUDES pursuant to N.J.S.A. 48:5A-17(a) and 28(c), that the Petitioner has sufficient financial and technical capacity and meets the legal, character and other qualifications necessary to construct, maintain and operate the necessary installations, lines and equipment and is capable of providing the proposed service in a safe, adequate and proper manner.

Therefore, the Petitioner is HEREBY ISSUED this Renewal Certificate of Approval as evidence of Petitioner's authority to construct and operate a cable television system within the entirety of the Borough.

This Renewal Certificate is subject to all applicable State and federal laws, the rules and regulations of the Office of Cable Television, and any such lawful terms, conditions, and limitations as currently exist or may hereafter be attached to the exercise of the privileges granted herein.

The Petitioner shall adhere to the operating standards set forth by the Federal Communications Commission's rules and regulations, 47 C.F.R. Section 76.1 et seq. Any modifications to the provisions thereof, shall be incorporated into this Certificate. Additionally and more specifically, the Petitioner shall adhere to the technical standards of 47 C.F.R. Part 76, Subpart K.

Failure to comply with all applicable laws, rules, regulations and orders of the Board or Office of Cable Television and/or the terms, conditions, and limitations set forth herein may constitute sufficient grounds for the suspension or revocation of this Certificate.

This Renewal Certificate is issued on the representation that the statements contained in the Petitioner's applications are true, and the undertakings therein contained shall be adhered to and enforceable unless specific waiver is granted by the Office of Cable Television pursuant to the authority contained in N.J.S.A. 48:5A-1 et seq.

This Certificate shall expire ten years from the date of issuance.

DATED: April 27, 2000

BOARD OF PUBLIC UTILITIES
BY:

(signed)

HERBERT H. TATE
PRESIDENT

(signed)

CARMEN J. ARMENTI
COMMISSIONER

(signed)

FREDERICK F. BUTLER
COMMISSIONER

ATTEST:

(signed)

EDWARD D. BESLOW
ACTING SECRETARY